

Executive Summary – Enforcement Matter – Case No. 48047
Western Refining Wholesale, Inc. dba C & R Fuel Control 51
RN102790995
Docket No. 2013-2203-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

No

Location(s) Where Violation(s) Occurred:

C & R Fuel Control 51, 11201 Pellicano Drive, El Paso, El Paso County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 16, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$16,751

Amount Deferred for Expedited Settlement: \$3,350

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$13,401

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 48047
Western Refining Wholesale, Inc. dba C & R Fuel Control 51
RN102790995
Docket No. 2013-2203-PST-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: October 29, 2013

Date(s) of NOE(s): December 13, 2013

Violation Information

1. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank (UST) system at least once every 60 days [30 TEX. ADMIN. CODE § 334.42(i)].
2. Failed to provide corrosion protection to all underground metal components of the UST system which is designed or used to convey, contain, or store regulated substances. Specifically, the submersible sump pumps were in contact with the surrounding soil and were not protected from corrosion [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)].
3. Failed to test the corrosion protection system for performance and operability at a frequency of at least once every three years. Specifically, the triennial test was not conducted by the October 4, 2013 due date [30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d)].
4. Failed to report a suspected release of a regulated substance to the TCEQ within 24 hours of discovery. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not reported [30 TEX. ADMIN. CODE § 334.72].
5. Failed to investigate a suspected release within 30 days of discovery. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following:

- a. Removed the surrounding soil on sumps 1 and 2 and began conducting bimonthly inspections of the cathodic protection system on December 6, 2013;
- b. Successfully conducted the triennial testing of the corrosion protection system on November 20, 2013; and
- c. Established and implemented procedures to report a suspected release on December 12, 2013.

Executive Summary – Enforcement Matter – Case No. 48047
Western Refining Wholesale, Inc. dba C & R Fuel Control 51
RN102790995
Docket No. 2013-2203-PST-E

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, conduct an investigation of the suspected release and implement appropriate corrective measures; and
- b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision a.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: John Fennell, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-2616; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Leslie A. Allen, Vice President, Environmental and Regulatory Affairs,
Western Refining Wholesale, Inc. dba C & R Fuel Control 51, 1250 West Washington
Street, Suite 101, Tempe, Arizona 85281

Kevin F. Goode, Vice President, Wholesale, Western Refining Wholesale, Inc. dba C & R
Fuel Control 51, 1250 West Washington Street, Suite 101, Tempe, Arizona 85281

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES Assigned **PCW** 16-Dec-2013
27-Mar-2014 Screening 17-Dec-2013 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51
Reg. Ent. Ref. No. RN102790995
Facility/Site Region 6-El Paso Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 48047 No. of Violations 4
Docket No. 2013-2203-PST-E Order Type 1660
Media Program(s) Petroleum Storage Tank Government/Non-Profit No
Multi-Media EC's Team John Fennell
Enforcement Team 7
Admin. Penalty \$ Limit Minimum \$0 Maximum \$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$17,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 0.0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No adjustment for compliance history.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 -\$1,561

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$1,019
Approx. Cost of Compliance \$7,300
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$15,939

OTHER FACTORS AS JUSTICE MAY REQUIRE 5.1% Adjustment \$812

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with Violation Nos. 1, 2, and 3.

Final Penalty Amount \$16,751

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$16,751

DEFERRAL 20.0% Reduction Adjustment -\$3,350

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY \$13,401

Screening Date 17-Dec-2013

Docket No. 2013-2203-PST-E

PCW

Respondent Western Refining Wholesale, Inc. dba C & R Fuel

Policy Revision 3 (September 2011)

Case ID No. 48047

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102790995

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 17-Dec-2013 **Docket No.** 2013-2203-PST-E **PCW**
Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51 *Policy Revision 3 (September 2011)*
Case ID No. 48047 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN102790995
Media [Statute] Petroleum Storage Tank
Enf. Coordinator John Fennell
Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.42(i)
Violation Description Failed to inspect all sumps including dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank ("UST") system at least once every 60 days.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5.0%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1 38 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended based on documentation of the violation during the October 29, 2013 investigation to the December 6, 2013 compliance date.

Good Faith Efforts to Comply

25.0% Reduction

\$312

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent came into compliance on December 6, 2013, prior to the December 13, 2013 Notice of Enforcement ("NOE").

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$986

This violation Final Assessed Penalty (adjusted for limits) \$986

Economic Benefit Worksheet

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Case ID No. 48047

Reg. Ent. Reference No. RN102790995

Media Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	30-Aug-2013	6-Dec-2013	1.19	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the sumps, manways, overfill containers, or catchment basins. The Date Required is 60 days before the investigation. The Final Date is the compliance date.

Approx. Cost of Compliance

\$100

TOTAL

\$106

Screening Date 17-Dec-2013

Docket No. 2013-2203-PST-E

PCW

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Policy Revision 3 (September 2011)

Case ID No. 48047

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102790995

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.49(a) and (c)(4) and Tex. Water Code § 26.3475(d)

Violation Description

Failed to provide corrosion protection to all underground metal components of the UST system which is designed or used to convey, contain, or store regulated substances. Specifically, the submersible sump pumps were in contact with the surrounding soil and were not protected from corrosion. Also, failed to test the corrosion protection system for performance and operability at a frequency of at least once every three years. Specifically, the triennial test was not conducted by the October 4, 2013 due date.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

38

Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One quarterly event is recommended based on documentation of the violation during the October 29, 2013 investigation to the December 6, 2013 compliance date.

Good Faith Efforts to Comply

25.0%

Reduction

\$937

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

Notes

The Respondent came into compliance on December 6, 2013, prior to the December 13, 2013 NOE.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$610

Violation Final Penalty Total \$2,956

This violation Final Assessed Penalty (adjusted for limits) \$2,956

Economic Benefit Worksheet

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Case ID No. 48047

Reg. Ent. Reference No. RN102790995

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$1,500	29-Oct-2013	6-Dec-2013	0.10	\$1	\$10	\$11
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the soil and water from the sumps and test the corrosion protection system. The Date Required is the investigation date. The Final Date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	29-Oct-2010	20-Nov-2013	3.98	\$100	\$500	\$600
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost for completing the triennial testing. The Date Required is three years prior to the investigation. The Final Date is the compliance date.

Approx. Cost of Compliance

\$2,000

TOTAL

\$610

Screening Date 17-Dec-2013

Docket No. 2013-2203-PST-E

PCW

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Policy Revision 3 (September 2011)

Case ID No. 48047

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102790995

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.72

Violation Description Failed to report a suspected release of regulated substance to the TCEQ within 24 hours of discovery. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not reported.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

96 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$312

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on December 12, 2013, prior to the December 13, 2013 NOE.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$107

Violation Final Penalty Total \$986

This violation Final Assessed Penalty (adjusted for limits) \$986

Economic Benefit Worksheet

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Case ID No. 48047

Reg. Ent. Reference No. RN102790995

Media Petroleum Storage Tank

Violation No. 3

Percent Interest 5.0 **Years of Depreciation** 15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$100	29-Oct-2013	12-Dec-2013	0.12	\$1	n/a	\$1
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated delayed cost to establish and implement procedures for reporting suspected releases. The Date Required is the investigation date. The Final Date is the compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Sep-2013	12-Dec-2013	1.20	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to report a suspected release. The Date Required is the date of the suspected release. The Final Date is the compliance date.

Approx. Cost of Compliance \$200

TOTAL \$107

Screening Date 17-Dec-2013

Docket No. 2013-2203-PST-E

PCW

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Policy Revision 3 (September 2011)

Case ID No. 48047

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102790995

Media [Statute] Petroleum Storage Tank

Enf. Coordinator John Fennell

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.74

Violation Description

Failed to investigate a suspected release of regulated substance within 30 days of discovery. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not investigated.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 3

77 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended from the October 1, 2013 release investigation due date to the December 17, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$196

Violation Final Penalty Total \$11,823

This violation Final Assessed Penalty (adjusted for limits) \$11,823

Economic Benefit Worksheet

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Case ID No. 48047

Reg. Ent. Reference No. RN102790995

Media Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	1-Oct-2013	14-Jul-2014	0.78	\$196	n/a	\$196

Notes for DELAYED costs

Estimated cost to investigate a suspected release and implement appropriate corrective measures. The Date Required is the release investigation due date. The Final Date is the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$196

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603421876, RN102790995, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603421876, Western Refining Wholesale, Inc. **Classification:** SATISFACTORY **Rating:** 0.69

Regulated Entity: RN102790995, C & R FUEL CONTROL 51 **Classification:** HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 01 - Gas Stations with convenience Stores and other Gas Stations

Location: 11201 PELLICANO DR EL PASO, TX 79935-5303, EL PASO COUNTY

TCEQ Region: REGION 06 - EL PASO

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER EE0886N

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 19718

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: December 17, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 17, 2008 to December 17, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Judy Kluge **Phone:** (817) 588-5825

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	September 16, 2010	(863355)
Item 2	February 10, 2011	(895220)
Item 3	March 15, 2011	(905357)
Item 4	July 28, 2011	(942219)
Item 5	December 05, 2011	(970218)
Item 6	August 15, 2012	(1027275)
Item 7	January 29, 2013	(1054422)
Item 8	August 12, 2013	(1103314)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WESTERN REFINING
WHOLESALE, INC. DBA C & R
FUEL CONTROL 51
RN102790995**

§ **BEFORE THE**
§
§
§ **TEXAS COMMISSION ON**
§
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2013-2203-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Western Refining Wholesale, Inc. dba C & R Fuel Control 51 ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent operates a convenience store with retail sales of gasoline at 11201 Pellicano Drive in El Paso, El Paso County, Texas (the "Facility").
2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 18, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Sixteen Thousand Seven Hundred Fifty-One Dollars (\$16,751) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Thirteen Thousand Four Hundred One Dollars (\$13,401) of the administrative penalty and Three Thousand Three Hundred Fifty Dollars (\$3,350) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Removed the surrounding soil on sumps 1 and 2 and began conducting bimonthly inspections of the cathodic protection system on December 6, 2013;
 - b. Successfully conducted the triennial testing of the corrosion protection system on November 20, 2013; and
 - c. Established and implemented procedures to report a suspected release on December 12, 2013.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Facility, the Respondent is alleged to have:

1. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days, in violation of 30 TEX. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on October 29, 2013.

2. Failed to provide corrosion protection to all underground metal components of the UST system which is designed or used to convey, contain, or store regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 29, 2013. Specifically, the submersible sump pumps were in contact with the surrounding soil and were not protected from corrosion.
3. Failed to test the corrosion protection system for performance and operability at a frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 29, 2013. Specifically, the triennial test was not conducted by the October 4, 2013 due date.
4. Failed to report a suspected release of a regulated substance to the TCEQ within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72, as documented during an investigation conducted on October 29, 2013. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not reported.
5. Failed to investigate a suspected release within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on October 29, 2013. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not investigated.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Western Refining Wholesale, Inc. dba C & R Fuel Control 51, Docket No. 2013-2203-PST-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
El Paso Regional Office
Texas Commission on Environmental Quality
401 E. Franklin Ave, Suite 560
El Paso TX 79901-1212

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Ramona Harris
For the Executive Director

7/7/14
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Kevin F Goode
Signature

4-17-14
Date

Kevin F Goode
Name (Printed or typed)

VP Wholesale
Title

Authorized Representative of
Western Refining Wholesale, Inc. dba C & R Fuel Control 51

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.